DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Medicare & Medicaid Services

42 CFR Parts 410, 411, 416, 419, 489, and 495

[CMS-1525-CN2]

RIN 0938-AQ26

Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements; Corrections

AGENCY: Centers for Medicare & Medicaid Services (CMS), HHS.

ACTION: Final rule; Correction.

SUMMARY: This document corrects technical errors that appeared in the final rule with comment period published in the **Federal Register** on November 30, 2011, entitled "Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient Notification Requirements in Provider Agreements" and in the correction notice published in the **Federal Register** on January 4, 2012, entitled "Medicare and Medicaid Programs: Hospital Outpatient Prospective Payment; Ambulatory Surgical Center Payment; Hospital Value-Based Purchasing Program; Physician Self-Referral; and Patient

Notification Requirements in Provider Agreements; Corrections."

DATES: Effective date: This document is effective *on* [*OFR insert date of publication in the* ***Federal Register***].

Applicability Date: The corrections noted in this document and posted on the CMS website are applicable to payments on or after January 1, 2012.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

I. Regulatory Overview

In FR Doc. 2011-26812 of November 30, 2011 (76 FR 74122) and FR Doc. 2011-33751 of January 4, 2012 (77 FR 217), there were a number of technical errors that are identified and corrected in the "Correction of Errors" section below.

We issued the calendar year (CY) 2012 hospital outpatient prospective payment system (OPPS)/ambulatory surgical center (ASC) final rule with comment period on November 1, 2011 (hereinafter referred to as the CY 2012 OPPS/ASC final rule with comment period). The CY 2012 OPPS/ASC final rule with comment period appeared in the November 30, 2011 **Federal Register**.

We issued a correction notice for the CY 2012 OPPS/ASC final rule with comment period on December 30, 2011

(hereinafter referred to as the CY 2012 OPPS/ASC correction notice). The CY 2012 OPPS/ASC correction notice appeared in the January 4, 2012 **Federal Register**.

The provisions in this correction notice are effective as if they had been included in the CY 2012 OPPS/ASC final rule with comment period and in the CY 2012 OPPS/ASC correction notice. Accordingly, the corrections are effective January 1, 2012.

II. Background

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to exclude line items that were eligible for payment in the claims year but did not meet the Medicare requirements for payment (76 FR 74141). Line items not meeting requirements for Medicare payment were rejected or denied during claims processing. It is our longstanding policy not to use line items that were rejected or denied for payment for modeling costs under the OPPS. In reviewing the claims data used to establish the ambulatory payment classification (APC) median costs for the CY 2012 OPPS/ASC final rule with comment period, we discovered that the trim of unpaid lines was not applied correctly. Therefore, we published a correction notice in the **Federal Register** on January 4, 2012, to correct our programming logic in the OPPS data process to apply the line item trim correctly. We

also recalculated the median costs for each separately paid service using the claims that resulted from the correctly applied trim. In this correction notice, we are correcting the revenue code-to-cost center crosswalk in our programming logic and the packaging status of two drug codes.

III. Summary of Errors

A. Corrections to the Revenue Code-to-Cost Center Crosswalk

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to apply the hospital-specific cost-to-charge ratios (CCRs) to the hospital's charges at the most detailed level possible, based on a revenue code-to-cost center crosswalk that contains a hierarchy of CCRs used to estimate costs from charges for each revenue code (76 FR 74134). This allowed us to estimate line-item costs for every claim in the dataset used to model the OPPS. In reviewing the program logic used to establish the APC median costs for the CY 2012 OPPS/ASC final rule with comment period, we discovered that this revenue code-to-cost center crosswalk contained incorrect mappings due to misalignments for several revenue codes, specifically revenue codes 790 (Extra-Corp Shock Wave Therapy), 800 (Inpatient Dialysis), 801 (Inpatient Hemodialysis), 802 (Inpatient peritoneal

dialysis), 803 (inpatient dialysis CAPD), 804 (Inpatient dialysis CCPD), and 809 (Other inp dialysis). In this correction notice, we are correcting the revenue code-to-cost center crosswalk in our program logic to accurately reflect the crosswalk available online at http://www.cms.gov/HospitalOutpatientPPS/03_crosswalk.asp#TopOfPage. To obtain accurate median costs, we applied the available CCRs to the appropriate revenue code charges to estimate cost and recalculated the APC median costs for each separately paid service. We are making no other changes to the programming described in the CY 2012 OPPS/ASC final rule with comment period or the subsequent CY 2012 OPPS/ASC correction notice, which resolved a technical error in our cost modeling where the line item trim for eligible unpaid lines was not applied correctly. Those changes to the claims dataset used to model the OPPS APC median costs are reflected in this correction notice, since the combination of the line item trim and revenue code crosswalk in the data process have an interactive effect on the calculation of the APC payments.

The application of the correct revenue code-to-cost center crosswalk for the specific revenue codes resulted in changes to the APC median costs used to establish the relative payment weights, therefore affecting the CY 2012 OPPS payment rates, copayments, outlier threshold, and

regulatory impact analysis. Due to changes in the APC median costs, we recalculated the budget neutral weight scaler discussed in section II.A.4. of the CY 2012 OPPS/ASC final rule with comment period (76 FR 74189) and in the CY 2012 OPPS/ASC correction notice when we addressed the line item trim issue. Using the updated unscaled relative weights, the CY 2012 budget neutrality weight scaler is changed from 1.3585 to 1.3597. We note that the weight scaler was initially corrected in the CY 2012 OPPS/ASC correction notice (77 FR 218) from 1.3588 to 1.3585. We also note that changes associated with the revised APC median costs and the corrected budget neutrality weight scaler have no additional effect on the budget neutrality, in particular, those applied to the CY 2012 conversion factor. Using the corrected revenue code-to-cost center crosswalk in our programs, the CY 2012 OPPS fixed-dollar outlier threshold remains at $2,025, as published in the CY 2012 OPPS/ASC correction notice.

We are also correcting the CY 2012 estimated impacts. The CY 2012 OPPS/ASC correction notice made changes to accurately apply the line item trim in our ratesetting process. As previously stated in this correction notice we are applying a corrected revenue code-to-cost center crosswalk. The combined corrections to the line item trim and revenue code-to-cost center crosswalk affects the calculation of APC median costs and the CY 2012 OPPS payment

rates. Therefore, this correction notice makes minor changes to Table 59—Estimated Impact of the Final CY 2012 for the Hospital OPPS.

To view the revised payment rates that result from the changed median costs as well as the correction to the packaging status of HCPCS codes J1642 and J1644, see the Addenda and supporting files that are posted on the CMS Web site at: http://www.cms.gov/HospitalOutpatientPPS/HORD/. All revised Addenda for this correction notice will be contained in a zipped folder on the webpage associated with this correction notice. The corrected CY 2012 table of updated offset amounts is posted on the OPPS website under "Annual Policy Files" which is found on the left side of the page. The corrected file of median costs is found under supporting documentation for CMS-1525-FC.

ASC payment rates are based on the OPPS relative payment weights for the majority of services that are provided at ASCs. Therefore, the correct application of the line item based trim and the correct application of the revenue code-to-cost center crosswalk for the revenue codes specified above have an effect on the CY 2012 ASC relative payment weights and ASC payment rates. Due to the changes to the OPPS payment weights, we had to recalculate the budget neutral ASC weight scalar of 0.9466 discussed in section XIII.H.2.a of the CY 2012 OPPS/ASC final rule with

comment period (76 FR 74447 to 74448). In the CY 2012 OPPS/ASC correction notice, we corrected the application of the line item based trim; using the updated scaled OPPS relative weights, the CY 2012 budget neutrality ASC weight scalar changed from 0.9466 to 0.9477 (77 FR 218). In this correction notice, we corrected the application of the revenue code-to-cost center crosswalk for the revenue codes specified above; using the updated scaled OPPS relative weights, the CY 2012 budget neutrality ASC weight scalar changed from 0.9477 to 0.9481. The changes associated with the revised OPPS relative weights and the corrected budget neutrality ASC weight scalar have no effect on the CY 2012 ASC conversion factor. To view the revised ASC payment rates that result from the revised ASC relative payment weights, see the ASC Addenda that are posted on the CMS Web site at: http://www.cms.gov/Medicare/Medicare-Fee-for-Service-Payment/ASCPayment/ASC-Regulations-and-Notices.html. Select "CMS-1525-FC" from the list of regulations. All revised ASC addenda for this correction notice are contained in the zipped folder entitled "Addendum AA, BB, DD1, DD2, EE - revised ASC payment rates resulting from upcoming Federal Register Correction Notice publication" at the bottom of the page for CMS-1525-FC.

B. Correction to Packaging Status of Drug Codes

In the CY 2012 OPPS/ASC final rule with comment period, we finalized a continuation of our policy to make a single packaging determination for a drug, rather than an individual healthcare common procedure coding system (HCPCS) code, when a drug has multiple HCPCS codes describing different dosages (76 FR 74303). For the CY 2012 OPPS/ASC final rule with comment period, there was an error in the calculation to determine the packaging status of drugs with multiple HCPCS codes that describe different dosages. This error resulted in the per-day cost for HCPCS J1642 (Injection, heparin sodium (heparin lock flush), per 10 units) and HCPCS J1644 (Injection, heparin sodium, per 1000 units) to be in excess of the $75 packaging threshold and both codes were consequently assigned to status indicator "K" (separately paid). After application of the correct calculation to determine the per-day cost for drugs that have multiple HCPCS codes describing different dosages, the per day cost for HCPCS J1642 and J1644 was below the $75 packaging threshold. Therefore, we are changing the status indicator assignment for HCPCS codes J1642 and J1644 from "K" to "N" (packaged) for CY 2012 to reflect this correction. In addition, because drugs that are determined to be packaged in the OPPS are also packaged under the ASC payment system, we are changing the ASC payment indicator assignment for HCPCS codes J1642 and

J1644 from "K2" to "N1" (packaged) for CY 2012 to reflect the correction detailed above.

III. Waiver of Proposed Rulemaking and the 30-Day Delay in Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** to provide a period for public comment before the provisions of a rule take effect in accordance with section 553(b) of the Administrative Procedure Act (APA) (5 U.S.C. 553(b)). However, we can waive this notice and comment procedure if the agency finds, for good cause, that the notice and comment process is impracticable, unnecessary, or contrary to the public interest, and incorporates a statement of the finding and the reasons therefore in the notice.

Section 553(d) of the APA ordinarily requires a 30-day delay in effective date of final rules after the date of their publication in the **Federal Register**. This 30-day delay in effective date can be waived, however, if an agency finds for good cause that the delay is impracticable, unnecessary, or contrary to the public interest, and the agency incorporates a statement of the findings and its reasons in the rule issued.

The policies and payment methodologies finalized in the CY 2012 OPPS/ASC final rule with comment period have previously been subjected to notice and comment procedures.

This correction notice merely provides technical corrections to the CY 2012 OPPS/ASC final rule with comment period and the subsequent CY 2012 OPPS/ASC correction notice. The CY 2012 OPPS/ASC final rule with comment period was promulgated through notice and comment rulemaking. This correction notice does not make substantive changes to the policies or payment methodologies that were finalized in the final rule with comment period. For example, to conform the document to the final policies of the CY 2012 OPPS/ASC final rule with comment period, this notice makes changes to revise inaccurate tabular information and update payment numbers used in the example for calculation of an adjusted Medicare Payment. Therefore, we find it unnecessary to undertake further notice and comment procedures with respect to this correction notice. In addition, we believe it is important for the public to have the correct information as soon as possible and find no reason to delay the dissemination of it. For the reasons stated above, we find that both notice and comment and the 30-day delay in effective date for this correction notice are unnecessary. Therefore, we find there is good cause to waive notice and comment procedures and the 30-day delay in effective date for this correction notice.

IV. Correction of Errors

A. Corrections to CY 2012 OPPS/ASC Correction Notice

In FR Doc. 2011-33751 of January 4, 2012 (77 FR 217), make the following corrections:

1. On page 218, in the first column, in the second paragraph, in line 12, revise "1.3585" to read "1.3597".

2. On page 218, in the third column, in line 11, revise "0.9477" to read "0.9481".

3. On page 219, in the third column, in the first instruction, revise "1.3585" to read "1.3597".

4. On page 222, in the first column—

A. In instruction 5.A, revise "$309.46" to read "$309.74".

B. In instruction 5.B, revise "$303.27" to read "$303.54".

C In instruction 6.A, revise "$244.02" to read "$244.24" and revise "$309.46" to read "$309.74".

5. On page 222, in the second column—

A. In instruction 6.B, revise "$239.14" to read "$239.35" and revise "$303.27" to read "$303.54".

B. In instruction 6.C, revise "$123.78" to read "$123.90" and revise "$309.46" to read "$309.74".

C. In instruction 6.D, revise "$121.31" to read "$121.42" and revise "$303.27" to read "$303.54".

D. In instruction 6.E, revise "$367.80" to read "$368.13".

E. In instruction 6.F, revise "$123.78" to read "$123.90" and revise "$244.02" to read "$244.24".

F. In instruction 6.G, revise "$360.44" to read "$360.76", "$239.14" to read "$239.35", and "$121.31" to read "$121.42".

G. In instruction 7.A, revise "$61.90" to read "$61.95".

6. On page 222, in the third column—

A. In instruction 7.B, revise "$309.46" to read "$309.74".

B. In instruction 9.A, reviae "0.9477" to read "0.9481".

C. In instruction 9.B, revise "0.9477" to read "0.9481".

7. On pages 223 through 226, revise Table 59--Estimated Impact of the Final CY 2012 Changes for the Hospital Outpatient Prospective Payment System to read as follows:

Table 59—ESTIMATED IMPACT OF THE FINAL CY 2012 FOR THE HOSPITAL OUTPATIENT PROSPECTIVE PAYMENTS SYSTEM

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjust ment	All Changes
ALL FACILITIES *	**(1)**	**(2)**	**(3)**	**(4)**	**(5)**	**(6)**	**(7)**
ALL HOSPITALS (excludes hospitals permanently held harmless and CMHCs)	3,894	0.2	0.0	-0.2	1.9	2.0	1.8
URBAN HOSPITALS	2,945	0.2	0.0	-0.2	2.0	2.0	1.9
LARGE URBAN (GT 1 MILL.)	1,607	0.2	0.1	-0.2	2.0	2.0	1.9

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjust ment	All Changes
OTHER URBAN	1,338	0.2	0.0	-0.2	1.9	2.1	1.8
(LE 1 MILL.)							
RURAL HOSPITALS	949	0.1	-0.3	-0.2	1.5	1.7	1.5
SOLE COMMUNITY	384	0.0	-0.2	-0.2	1.5	1.9	1.4
OTHER RURAL	565	0.2	-0.4	-0.2	1.5	1.5	1.5
BEDS (URBAN)							
0 - 99 BEDS	1,028	-0.5	0.1	-0.2	1.2	1.3	1.2
100-199 BEDS	841	0.3	0.2	-0.2	2.1	2.2	2.0
200-299 BEDS	454	0.5	0.1	-0.2	2.3	2.4	2.2
300-499 BEDS	419	0.3	-0.2	-0.2	1.8	1.9	1.8
500 + BEDS	203	0.2	0.1	-0.2	2.0	2.0	1.9
BEDS (RURAL)							
0 - 49 BEDS	349	0.0	-0.1	-0.2	1.5	1.8	1.5
50- 100 BEDS	355	0.0	-0.3	-0.2	1.4	1.6	1.4
101- 149 BEDS	140	0.2	-0.2	-0.2	1.7	1.9	1.7
150- 199 BEDS	57	0.1	-0.5	-0.2	1.2	1.8	1.2
200 + BEDS	48	0.2	-0.3	-0.2	1.5	1.5	1.4
VOLUME (URBAN)							
LT 5,000 Lines	597	-5.0	0.4	-0.2	-3.0	-2.8	-2.7
5,000 - 10,999 Lines	146	-2.1	0.1	-0.2	-0.3	0.0	-0.4
11,000 - 20,999 Lines	235	-0.7	-0.1	-0.2	0.9	0.9	0.9
21,000 - 42,999 Lines	477	0.3	-0.1	-0.2	1.9	1.9	1.8
42,999 - 89,999 Lines	713	0.5	0.2	-0.2	2.3	2.3	2.2
GT 89,999 Lines	777	0.2	0.0	-0.2	1.9	2.0	1.9
VOLUME (RURAL)							
LT 5,000 Lines	67	-0.7	-0.6	-0.2	0.3	2.8	0.4
5,000 - 10,999 Lines	71	0.7	0.3	-0.2	2.7	2.9	2.6
11,000 - 20,999 Lines	174	0.3	-0.1	-0.2	1.8	2.1	1.7
21,000 - 42,999 Lines	282	0.3	-0.2	-0.2	1.7	2.0	1.7
GT 42,999 Lines	355	0.0	-0.3	-0.2	1.4	1.6	1.4

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjust ment	All Changes
REGION (URBAN)							
NEW ENGLAND	150	-0.2	4.2	-0.2	5.7	5.7	5.4
MIDDLE ATLANTIC	355	0.1	0.0	-0.2	1.8	1.8	1.5
SOUTH ATLANTIC	449	0.3	-0.5	-0.2	1.5	1.5	1.6
EAST NORTH CENT.	472	0.3	-0.7	-0.2	1.3	1.3	1.1
EAST SOUTH CENT.	183	0.6	-0.8	-0.2	1.5	1.5	1.5
WEST NORTH CENT.	190	0.2	-0.1	-0.2	1.7	2.5	1.8
WEST SOUTH CENT.	498	0.3	0.1	-0.2	2.1	2.1	2.1
MOUNTAIN	208	0.2	-0.2	-0.2	1.6	2.0	1.6
PACIFIC	394	0.1	0.2	-0.2	2.0	2.0	2.0
PUERTO RICO	46	0.3	0.4	-0.2	2.4	2.4	2.4
REGION (RURAL)							
NEW ENGLAND	25	-0.9	-0.3	-0.2	0.4	0.4	0.5
MIDDLE ATLANTIC	67	-0.1	0.1	-0.2	1.6	1.6	1.6
SOUTH ATLANTIC	162	0.2	-0.2	-0.2	1.6	1.6	1.7
EAST NORTH CENT.	128	0.0	-0.8	-0.2	0.8	0.8	0.7
EAST SOUTH CENT.	170	0.6	-0.6	-0.2	1.6	1.6	1.6
WEST NORTH CENT.	101	-0.3	0.1	-0.2	1.5	2.7	1.6
WEST SOUTH CENT.	200	0.4	-0.1	-0.2	2.0	2.0	2.0
MOUNTAIN	67	0.0	-0.7	-0.2	1.0	2.8	0.9
PACIFIC	29	0.1	1.0	-0.2	2.7	2.7	2.8
TEACHING STATUS							
NON-TEACHING	2,895	0.3	-0.1	-0.2	1.9	2.0	1.8
MINOR	708	0.4	-0.1	-0.2	1.9	2.1	1.8
MAJOR	291	-0.1	0.3	-0.2	1.9	1.9	1.8
DSH PATIENT PERCENT							
0	11	-1.6	-0.2	-0.2	-0.1	-0.1	0.4
GT 0 - 0.10	353	0.0	0.2	-0.2	1.9	2.0	1.8
0.10 - 0.16	357	0.3	-0.3	-0.2	1.7	1.7	1.5
0.16 - 0.23	734	0.3	-0.1	-0.2	1.9	2.1	1.8
0.23 - 0.35	1,040	0.3	0.0	-0.2	2.0	2.1	1.9
GE 0.35	785	0.2	0.1	-0.2	1.9	1.9	1.9
DSH NOT AVAILABLE **	614	-5.8	0.6	-0.2	-3.6	-3.6	-3.5

	Number of Hospitals	APC Recalibration	New Wage Index and Rural Adjustment	New Cancer Hospital Adjustment	Comb (cols 2,3,4) with Market Basket Update	Column 5 with Frontier Wage Index Adjustment	All Changes
URBAN TEACHING/DSH							
TEACHING & DSH	903	0.2	0.1	-0.2	1.9	2.1	1.8
NO TEACHING/DSH	1,456	0.4	0.0	-0.2	2.1	2.1	2.0
NO TEACHING/NO DSH	10	-1.6	-0.2	-0.2	-0.1	-0.1	0.4
DSH NOT AVAILABLE**	576	-6.1	0.7	-0.2	-3.8	-3.8	-3.7
TYPE OF OWNERSHIP							
VOLUNTARY	2,061	0.3	0.1	-0.2	2.0	2.1	1.9
PROPRIETARY	1,272	0.1	-0.1	-0.2	1.6	1.7	1.6
GOVERNMENT	561	0.1	-0.3	-0.2	1.5	1.5	1.5
CMHCs	204	-32.4	-0.3	-0.2	-30.9	-30.9	-30.8
Cancer Hospitals	11	0.7	0.3	11.6	14.3	14.3	13.3

Column (1) shows total hospitals and/or CMHCs.

Column (2) shows the impact of changes resulting from the reclassification of HCPCS codes among APC groups and the final recalibration of APC weights based on CY 2010 hospital claims data.

Column (3) shows the budget neutral impact of updating the wage index by applying the FY 2012 hospital inpatient wage index.

Column (4) shows the budget neutral estimated impact within the OPPS of applying budget neutrality to the $71 million differential between the final cancer hospital adjustment and TOPS payments to these hospitals in the cost report model used to develop the cancer hospital adjustment.

Column (5) shows the impact of all budget neutrality adjustments and the proposed addition of the 1.9 percent OPD fee schedule increase factor (3.0 percent reduced by 1.0 percentage points for the proposed productivity adjustment and further reduced by 0.1 percentage point in order to satisfy statutory requirements set forth in the Affordable Care Act).

Column (6) shows the non-budget neutral impact of applying the frontier State wage adjustment, after application of the CY 2012 final OPD fee schedule increase factor.

Column (7) shows the additional adjustments to the conversion factor resulting from a change in the pass-through estimate and adds final outlier payments. This column also shows the expiration of section 508 wages on September 30, 2011 and the application of the frontier State wage adjustment for CY 2012.

*These 4,160 providers include children and cancer hospitals, which are held harmless to pre-BBA amounts, and CMHCs.

** Complete DSH numbers are not available for providers that are not paid under IPPS, including rehabilitation, psychiatric, and long-term care hospitals.

8. On page 226, in the first column, in instruction 11, revise “0.9477” to read “0.9481”.

B. Corrections to the Final Rule with Comment Period

In FR Doc. 2011-26812 of November 30, 2011 (76 FR 74122), make the following corrections:

1. On page 74303, in third column, end of the first paragraph, remove the last two sentences in the paragraph that begins at the bottom of the second column.

2. On page 74303, in third column, in the last paragraph, delete the following portion of the first sentence: “With the exception of the changed status indicators for HCPCS J1642 and J1644,” and capitalize the first letter of the new sentence.

3. On page 74304, in the third column of the table, in the data cells associated with J1642 and J1644, revise “K” to read “N”.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare--Hospital Insurance; and Program No. 93.774, Medicare--Supplementary Medical Insurance Program)

Dated: April 18, 2012

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Jennifer Cannistra,

Executive Secretary to

the Department.

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